

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of USTelecom For Forbearance Under)	WC Docket No. 12-61
47 U.S.C. § 160(c) From Enforcement of)	
Certain Legacy Telecommunications)	
Regulations)	
)	

COMMENTS ON USTELECOM FOREBEARANCE PETITION

The Vermont Public Service Board (“VPSB”), respectfully submits these comments in response to the United States Telecom Association’s (“USTelecom”) Petition for Forbearance from Certain Telecommunications Regulations. The VPSB comments address Categories 3 and 4, relating to Part 32 accounting and the separations/cost assignment requirements in Parts 36 and 64. As the VPSB understands the specific requests from USTelecom in these, the VPSB does not oppose them. However, the VPSB requests that the Commission clarify that (1) elimination of the identified Part 32 requirements does not preclude states from requesting or requiring equivalent information and (2) that forbearance from application of the Cost Assignment rules does not preclude states from making their own determinations concerning cost assignment and jurisdictional separations for state purposes.

In its petition, USTelecom seeks forbearance from portions of Parts 32, 36, and 64. The proposed forbearance from the Cost Assignment rules in Parts 36 and 64 is consistent with the Commission’s previous decision to grant AT&T and other Bell Operating Companies

forbearance from similar requirements.¹ At that time, the Commission concluded that the rules served no current federal need.

The VPSB does not oppose extending the forbearance from Cost Assignment Rules to all price cap carriers and takes no position on whether a federal need exists. However, the Commission also must recognize that for many states, a state need to evaluate the reasonableness of one or more of a price cap carrier's intrastate rates may remain. For example, Vermont has elected to regulate FairPoint Communications through an alternative regulation plan rather than traditional regulation. This structure, which goes a long way towards deregulating FairPoint's intrastate services recognizes the effects of competition. Yet even with competition, a recent VPSB proceeding concluded that nearly one third of FairPoint's customers did not have a landline alternative available. Some of these customers had wireless options, but wireless is not ubiquitous and Vermont's terrain makes coverage less extensive than coverage maps would suggest.² In this situation, it may be appropriate for the VPSB to take steps to protect customers with no effective alternative.³

To do this, however, it is essential that the Commission make clear that forbearance from application of the Cost Assignment Rules does not preclude states from adopting any reasonable approach to determining the separation of costs between the state and federal jurisdiction. The Commission did exactly that in the *AT&T Forbearance Order* in paragraph 25, the Commission observed that "We believe that AT&T, working cooperatively with the state commission in its region, can develop methods of separating costs, satisfying any remaining need states have for

¹ See, e.g., *Petition of AT&T Inc. for Forbearance Under 47 U.S.C. §160(c) with Regard to Certain of the Commission's Cost Assignment Rules*, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) ("AT&T Forbearance Order").

² For these reasons, the Vermont Public Service Department concluded that wireless was not a viable alternative in many areas of the state.

³ The VPSB has no current plans to alter the current regulatory structure, but the possible need remains.

jurisdictional separations information.” The Commission should adopt the same standard if it decides to grant USTelecom’s instant petition. The establishment of intrastate costs is essential for states to exercise their continuing jurisdiction over intrastate rates. Even where states have elected to reduce regulation, the need for state Universal Service Funds and the allocation of such funds may depend upon understanding the need of the receiving carriers. To do this, states must have the authority to establish intrastate cost allocations once the FCC has forbore from applying the Cost Assignment Rules. Reiteration of the Commission’s holding cited above will ensure that the effective elimination of the Cost Assignment Rules in Parts 36 and 64 for price cap carriers does not preclude states from continuing to regulate intrastate services (to the extent they deem appropriate).

The same clarification is important if the Commission decides to forbear from applying Part 32 to price cap carriers. The Commission should affirmatively state that its decision to not apply Part 32 to those carriers does not in any way affect states’ ability to request accounting information from carriers, including essentially the same information. In the *AT&T Forbearance Order*, the Commission affirmatively states in paragraph 33 that “We emphasize that we do not in this Order preempt any state accounting requirements adopted under state authority. . .

Although states will not have authority to enforce the federal Cost Assignment Rules as they apply to AT&T once this relief is effective, we do not read section 10(c) to prevent states from adopting similar provision to the extent that they have authority under state law.” The Commission also adopted various conditions in Paragraph 21 to ensure that information would be available in the future. The Commission should adopt the same principle in this Order if it decides to grant USTelecom’s petition to forbear from applying Parts 32, 36, and 64.

Respectfully submitted,

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